

1 BRYAN SCHWARTZ (SBN 209903)
 2 ADETUNJI OLUDE (SBN 264873)
 3 BRYAN SCHWARTZ LAW
 4 1330 Broadway, Suite 1630
 Oakland, California 94612
 Telephone: (510) 444-9300
 Facsimile: (510) 444-9301
 Email: bryan@bryanschwartzlaw.com
 Email: adetunji@bryanschartzlaw.com

7 *Attorneys for Individual and Representative
 Plaintiff Morales, et al., and the Putative Class*

9 Additional Counsel listed on last page

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 JESSICA MORALES, BERENISA CORTES
 13 PALOMINOS, DYLAN THOMAS, and
 14 FRANCES HANDCOCK, on behalf of
 themselves and classes of those similarly
 15 situated,

16 Plaintiffs,

17 v.

18 VON CURTIS, INC., a corporation; P.M.
 19 ADVANCED EDUCATION INC., a corporation;
 PAUL MITCHELL ADVANCED EDUCATION
 20 LLC, a corporation; JOHN PAUL MITCHELL
 SYSTEMS, a corporation; PMNV LAS VEGAS,
 LLC, a corporation; PMCA BAKERSFIELD,
 21 LLC, a corporation; PMHBW LLC, a
 corporation; PAUL MANTEA, an individual;
 22 D'ANN EVANS, an individual; ANN MARIE
 SAFADI, an individual; WINN CLAYBAUGH,
 23 an individual; JOHN PAUL DEJORIA
 collectively dba "PAUL MITCHELL THE
 24 SCHOOL"; and DOES 1 THROUGH 100,

26 Defendants

16 Case No. CV 13-04996-VGC

17 **FIRST AMENDED COLLECTIVE AND
 CLASS ACTION COMPLAINT FOR:**

- 18 (1) **Violation of Fair Labor Standards
 Act, 29 U.S.C. §§ 201 *et. seq.*;**
- 19 (2) **Violation of California Unfair
 Competition Law, Cal. Bus. & Prof.
 Code §§ 17200 *et. seq.*;**
- 20 (3) **Unpaid Minimum Wages (Cal. Lab.
 Code § 1194);**
- 21 (4) **Unpaid Overtime Wages (Cal. Lab.
 Code §§ 510, 1194);**
- 22 (5) **Meal and Rest Period Violations
 (Cal. Lab. Code §§ 226.7, 512);**
- 23 (6) **Waiting Time Penalties (Cal. Lab.
 Code §§ 201, 202, 203);**
- 24 (7) **Itemized Wage Statement
 Violations (Cal. Lab. Code § 226);**
- 25 (8) **Coerced Purchases(§§ 17200,
 450(a));**
- 26 (9) **Failure to Reimburse Business
 Expenses (§ 2802);**
- 27 (10) **Unpaid Minimum Wages (Nevada
 Constitution, N.R.S. §§ 608.016,
 608.250);**

- (11) Unpaid Overtime Wages (N.R.S. § 608.018);
- (12) Waiting Time Penalties (N.R.S. § 608.040);
- (13) Violation of Pay Schedule (N.R.S. § 608.060);
- (14) Unjust enrichment/restitution under Nevada Law;
- (15) Declaratory relief (28 U.S.C. §§ 2201-2202).

JURY TRIAL REQUESTED

10 Plaintiffs JESSICA MORALES, BERENISA CORTES PALOMINOS, DYLAN
11 THOMAS, and FRANCES HANDCOCK (“Named Plaintiffs”), by and through their attorneys,
12 on behalf of themselves and classes of those similarly situated, hereby complain against
13 Defendants VON CURTIS, INC., P.M. ADVANCED EDUCATION INC., PAUL MITCHELL
14 ADVANCED EDUCATION LLC, JOHN PAUL MITCHELL SYSTEMS, PMNV LAS VEGAS,
15 LLC, PMCA BAKERSFIELD, LLC, PMHBW LLC, WINN CLAYBAUGH, JOHN PAUL
16 DEJORIA, PAUL MANTEA, D’ANN EVANS, ANN MARIE SAFADI, and DOES 1 through
17 100, inclusive (collectively “Defendants” or “Paul Mitchell The School”) and allege upon
18 personal knowledge and belief as to their own acts, and upon information and belief (based upon
19 the investigation of their counsel) as to all other matters, as to which allegations they believe
20 substantial evidentiary support will exist after a reasonable opportunity for further investigation
21 and discovery, as follows:

I. INTRODUCTION

23 1. Named Plaintiffs are former students and employees (“student-employees”) of
24 Paul Mitchell The School. They enrolled in hair cutting and cosmetology programs at Paul
25 Mitchell The School in order to pursue their dreams of becoming trained, experienced
26 professionals. Not only did Defendants fail to provide the education and training advertised,
27 Defendants also unlawfully exploited Plaintiffs’ labor and benefitted as a result.

1 2. The Paul Mitchell The School is a for-profit business. Among Defendants' for-
 2 profit business activities is the provision of educational services (the "educational services
 3 business") to paying students in the cosmetological trades. This includes training students to
 4 practice the trades of cosmetology, barbering, esthetics or skin care, makeup artistry, manicuring,
 5 and massage therapy.

6 3. The Paul Mitchell The School's for-profit business activities also include the
 7 provision of personal services, for a fee, to the public (the "personal services business"). The
 8 Paul Mitchell The School salons offer a range of personal services for hair, skin, and body.
 9 Defendants advertise to the public that their beauty salons are comparable to other salons in the
 10 beauty and personal services industry, but are much cheaper because the work is performed by
 11 "[f]uture professionals under the supervision of an instructor."¹ Additionally, Defendants also
 12 sell Paul Mitchell salon and beauty products to the public and to Plaintiffs and other student-
 13 employees.

14 4. Each of the Plaintiffs and similarly situated employees worked many hours, for
 15 which Defendants failed to compensate them at all. Defendants' policy and practice required
 16 their student-employees, under the guise of educational experience, to provide cosmetology,
 17 barbering, esthetics or skin care, makeup artistry, manicuring and massage services to the public.
 18 Student-employees provided these services to Defendants' paying clients.

19 5. By failing to compensate Plaintiffs and thousands of other student-employees for
 20 their work, Defendants have denied them the benefits that the law affords to employees. Not
 21 only did Defendants charge tuition fees and extract massive fines from Plaintiffs and other
 22 student-employees, they exploited their labor and pocketed the profits.

23 6. While working for Defendants in Paul Mitchell The School salons, Plaintiffs were
 24 required to provide hair and cosmetology services to paying clients as well as clean, sweep, wash

25
 26 1 <http://eastbay.paulmitchell.edu/guest-services/services>, last visited April 27, 2014.
 27
 28

1 and fold laundry, take out the garbage, schedule clients, and stock and dispense supplies.
 2 Defendants' failure to compensate them for all of their work runs afoul of federal and state wage-
 3 and-hour laws, which require employers to pay the minimum wage and overtime to all workers
 4 whom they "suffer or permit" to work. Defendants' salons also compete with standard salons
 5 and displace other professionals in the beauty and personal services industry.
 6

7. Defendants' practices are in direct violation of the applicable federal and state
 8 wage-and-hour laws described below and constitute unfair business practices under state law.
 9 Plaintiffs, on behalf of both themselves and the other putative class members, seek unpaid wages
 10 and interest thereon for failure to pay for all hours worked at least at minimum wage; failure to
 11 pay overtime premium wages for overtime hours worked; failure to provide required meal
 12 periods or pay meal period premium wages; failure to provide required rest periods or pay rest
 13 period premium wages; statutory penalties for failure to provide accurate wage statements;
 14 waiting time penalties in the form of continuation wages for failure to timely pay employees all
 15 wages due upon separation of employment; failure to reimburse necessary business expenses;
 16 imposing and collecting unlawful fines; liquidated damages for failure to pay minimum wage;
 17 restitution for unfair competition; damages for failure to timely pay all wages according to
 18 schedule; declaratory judgment; injunctive relief and other equitable relief; reasonable attorney's
 19 fees pursuant to California Labor Code Sections 226(h) and 1194, 29 U.S.C. § 216(b), and
 20 Nevada Constitution, Article 15, Section 16; costs; and interest brought on behalf of Plaintiffs
 21 and others similarly situated.

22. Plaintiffs seek to certify a Rule 23 class of all similarly situated persons who
 23 work, or have worked, as an unpaid student-employee at Paul Mitchell The School salons in
 24 California and Nevada, as well as an FLSA Collective Action pursuant to § 216(b) of the Fair
 25 Labor Standards Act ("FLSA").

26 **II. JURISDICTION AND VENUE**

27. This Court has original jurisdiction over the first claim for relief pursuant to 28
 28 U.S.C. § 1331 and Section 16(b) of the FLSA, 29 U.S.C. § 216(b). This Court has original
 4

1 jurisdiction over the Second through Fifteenth claims for relief under the Class Action Fairness
 2 Act, 28 U.S.C. § 1332(d), because those claims involve class actions in which: (1) there are 100
 3 or more members in each of the proposed classes; (2) at least some members in each of the
 4 proposed classes have a different citizenship from Defendants; and (3) the claims of the proposed
 5 class members in each of the proposed classes exceed \$5,000,000 in the aggregate. This Court
 6 also has diversity jurisdiction over this action under 28 U.S.C. § 1332(a).

7 10. In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1337 over
 8 Named Plaintiffs' state law wage-and-hour claims because those claims derive from a common
 9 nucleus of operative fact as the FLSA claims alleged herein.

10 11. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
 12 §§ 2201 and 2202 and 28 U.S.C. § 1331.

13 12. The Northern District of California has personal jurisdiction over this matter
 14 because Defendants, presently and at all times relevant to this action, have conducted substantial
 15 and continuous commercial activities in this District and because many of the acts complained of
 16 herein occurred in this District and gave rise to the claims alleged.

17 13. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
 18 § 1331(b) and (c) because a substantial part of the events and omissions giving rise to this action
 19 occurred in this District and because this Court has personal jurisdiction over one or more
 20 corporate Defendants Von Curtis, Inc., P.M. Advanced Education Inc., Paul Mitchell Advanced
 21 Education LLC, John Paul Mitchell Systems, PMNV Las Vegas, LLC, PMCA Bakersfield, LLC
 22 and PMHBW LLC.

23 14. Pursuant to N.D. Cal. Local Rule 3-2(c) and (d), intra-district assignment to the
 24 San Francisco Division is proper.

25 **III. PARTIES**

26 15. Plaintiff Jessica Morales resides in Los Angeles County, California. Plaintiff
 27 Morales was a student and employee of Paul Mitchell The School from June 2011 to June 2012
 28 at Defendants' Sherman Oaks school.

1 16. Plaintiff Berenisa Cortes Palominos resides in Solano County, California.
2 Plaintiff Palominos was a student and employee of Paul Mitchell The School from 2011 to 2012
3 at Defendants' East Bay school.
4

5 17. Plaintiff Dylan Thomas resides in Clark County, Nevada. Plaintiff Thomas was a
6 student and employee of Paul Mitchell The School at Defendants' Las Vegas school from March
7 2011 to December 2012.
8

9 18. Plaintiff Frances Handcock resides in Fresno County, California. Plaintiff
10 Handcock was a student and employee of Paul Mitchell The School at Defendants' Fresno school
11 from 2011 to October 2012.
12

13 19. Named Plaintiffs are informed and believe that Defendant Von Curtis, Inc. (one of
14 the "Paul Mitchell Corporate Defendants" and a "Parent Corporation Defendant") is a Utah
15 corporation.
16

17 20. Named Plaintiffs are informed and believe that Defendant John Paul Mitchell
18 Systems (one of the "Paul Mitchell Corporate Defendants" and a "Parent Corporation
19 Defendant") is a California corporation.
20

21 21. Named Plaintiffs are informed and believe that Defendant Paul Mitchell Advanced
22 Education LLC (one of the "Paul Mitchell Corporate Defendants" and a "Parent Corporation
23 Defendant") is a Delaware corporation.
24

25 22. Named Plaintiffs are informed and believe that Defendant P.M. Advanced
26 Education Inc. (one of the "Paul Mitchell Corporate Defendants" and a "Parent Corporation
27 Defendant") is a California.
28

29 23. Named Plaintiffs are informed and believe that Defendant PMNV Las Vegas, LLC
30 (one of the "Paul Mitchell Corporate Defendants") is a Delaware corporation.
31

32 24. Named Plaintiffs are informed and believe that Defendant PMCA Bakersfield,
33 LLC (one of the "Paul Mitchell Corporate Defendants") is a Delaware corporation.
34

35 25. Named Plaintiffs are informed and believe that Defendant PMHBW LLC (one of
36 the "Paul Mitchell Corporate Defendants") is a Delaware corporation.
37

1 26. Named Plaintiffs are informed and believe that Defendant Paul Mantea is a
 2 California resident. Defendant Paul Mantea is an owner, in full or in part, of Paul Mitchell The
 3 School location at Sherman Oaks, CA, and/or is an owner, in full or in part, of one or more
 4 entities that either directly, or through their ownership of other entities, have an ownership
 5 interest in Paul Mitchell The School.

6 27. Named Plaintiffs are informed and believe that Defendant John Paul Dejoria is a
 7 Texas resident. Defendant John Paul Dejoria is an owner, in full or in part, of Paul Mitchell The
 8 School, or is an owner, in full or in part, of one or more entities that either directly, or through
 9 their ownership of other entities, have an ownership interest in Paul Mitchell The School.

10 28. Named Plaintiffs are informed and believe that Defendant D'Ann Evans is a
 11 California resident. Defendant D'Ann Evans is an owner, in full or in part, of Paul Mitchell The
 12 School location in Fresno, CA, and/or is an owner, in full or in part, of one or more entities that
 13 either directly, or through their ownership of other entities, have an ownership interest in Paul
 14 Mitchell The School.

15 29. Named Plaintiffs are informed and believe that Defendant Ann Marie Safadi is a
 16 Nevada resident. Defendant Ann Marie Safadi is an owner, in full or in part, of Paul Mitchell
 17 The School location in Las Vegas, NV, and/or is an owner, in full or in part, of one or more
 18 entities that either directly, or through their ownership of other entities, have an ownership
 19 interest in Paul Mitchell The School.

20 30. Named Plaintiffs are informed and believe that Defendant Winn Claybaugh is a
 21 Utah resident. Defendant Winn Claybaugh is an owner, in full or in part, of Paul Mitchell The
 22 School, or is an owner, in full or in part, of one or more entities that either directly, or through
 23 their ownership of other entities, have an ownership interest in Paul Mitchell The School.

24 31. Defendants, or some of them, are registered to do business in the United States
 25 under the name "Paul Mitchell The School" with some additional moniker which is often or
 26 always a geographical name. Paul Mitchell The School provides both cosmetology educational
 27 services and operates a cosmetology and spa personal services business in this judicial district.

1 Upon information and belief Defendants collectively own and operate over 50 and possibly over
 2 100 Paul Mitchell The School locations in Alabama, Arizona, Arkansas, California, Colorado,
 3 Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas,
 4 Kentucky, Maryland, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York,
 5 North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas,
 6 Utah, Virginia, Washington and Wisconsin.
 7

8 32. Defendants, or some of them, also have a financial interest in, and business
 9 relations with, certain beauty or cosmetology schools that are franchisees with one or more of the
 10 Defendants acting as the franchiser. Such locations operate not as "Paul Mitchell The School"
 11 but as one or more expressly denominated "Paul Mitchell Partner School(s)." No claims are
 12 made in this Complaint against any such franchisees arising from the operations conducted by
 13 any "Paul Mitchell Partner School." When the term "Paul Mitchell The School" is used in this
 14 Complaint it does not include any of the "Paul Mitchell Partner Schools" or the operations or
 15 activities conducted at or by such locations.
 16

**IV. THE STATUS OF CERTAIN DEFENDANTS AS A JOINTLY LIABLE
 EMPLOYER OR JOINTLY LIABLE ENTERPRISE**

17 33. Each Paul Mitchell The School location is registered with the respective State
 18 and/or other government regulatory authorities in the jurisdiction in which it operates as each
 19 being owned and/or operated by a separate corporate entity (an "Operating Entity").
 20

21 34. Some or all of the Parent Corporation Defendants and Defendants Claybaugh and
 22 DeJoria, either directly or through intermediaries that they own and control, own all or a part of
 23 all of the Operating Entities that conduct the business of Paul Mitchell The School.
 24

25 35. Some or all of the Parent Corporation Defendants and Defendants Claybaugh and
 26 DeJoria, either directly or through intermediaries that they own and control, control all of the
 27 activities of the Operating Entities that conduct the business of Paul Mitchell The School, in that
 28 such Defendants can, and do, make all of the decisions about how such Operating Entities can,
 and are allowed to, conduct the business operations of their respective Paul Mitchell The School

1 locations.

2 36. Some or all of the Parent Corporation Defendants and Defendants Claybaugh and
 3 DeJoria, either directly or through intermediaries that they own and control, are the true operators
 4 of the Operating Entities that conduct the business of Paul Mitchell The School, in that such
 5 Defendants can, and do, determine if such Operating Entities can, and are allowed to, conduct
 6 their business operations of their respective Paul Mitchell The School locations, such Operating
 7 Entities having no actual economic value or assets or ability to conduct profitable business
 8 operations besides their ongoing operations as a Paul Mitchell The School location, the
 9 continuance of such operations being subject to the whims of the Parent Corporation Defendants
 10 or some of them and Defendants Claybaugh and DeJoria.

11 37. The Parent Corporation Defendants, or some of them, along with Defendants
 12 Claybaugh and DeJoria, are properly considered a single legally liable common enterprise, or
 13 legally liable joint employer, in respect to the claims made in this Complaint against Paul
 14 Mitchell The School. Such Defendants own and have structured, managed and controlled the
 15 Operating Entities, and the other Paul Mitchell Corporate Defendants, and the operations of Paul
 16 Mitchell The School locations throughout the United States, in the following manner:

17 (a) Such Defendants have intentionally established the Operating Entities and
 18 other Paul Mitchell Corporate Defendants for the sole purpose of shielding themselves
 19 from legal liability from the operations of the same even though such Defendants have
 20 also caused and directed the actions giving rise to the liabilities asserted in this
 21 Complaint. Those actions are also criminal offenses under the FLSA and various state
 22 laws. As a result, such Defendants, as the instigators of those actions, cannot escape the
 23 civil liabilities associated with such criminal conduct by hiding behind the nominally
 24 separate legal existence of the Operating Entities and the other Paul Mitchell Corporate
 25 Defendants, as such nominally separate entities were mere tools for and instruments of
 26 such Defendants' illegal scheme;

27 (b) Such Defendants by virtue of their complete control of the Operating Entities

1 and the other Paul Mitchell Corporate Defendants have vitiated the separate legal
 2 existence of those entities as a matter of economic reality, as those entities have no other
 3 business purpose, function, or economic viability except as instruments of such
 4 Defendants for the conducting of the operations giving rise to the claims asserted in this
 5 Complaint;

6 (c) Such Defendants by virtue of their complete control of the Operating Entities
 7 and the other Paul Mitchell Corporate Defendants have assumed the status of joint
 8 employers of the Plaintiffs and other class members as both a matter of economic reality
 9 and law. Such assumption of joint employer status is required to prevent injustice and the
 10 evasion of the FLSA and the state laws at issue. The imposition of such joint employer
 11 status is justified as the level of control and direction exercised by such Defendants over
 12 the Operating Entities and the other Paul Mitchell Corporate Defendants was
 13 overwhelming and rendered the same mere straw or sham employers of the Plaintiffs and
 14 other class members;

15 (d) Such Defendants engaged, or suffered and permitted student-employees to
 16 work on behalf of Paul Mitchell The School locations, and had control over their wages,
 17 hours, and working conditions. Such Defendants knew that student-employees serviced
 18 their paying customers while being paid less than the minimum wage. Such Defendants
 19 had the power to enforce Paul Mitchell The School policies regarding payment of
 20 minimum wages to student-employees. Yet, such Defendants failed to prevent the
 21 student-employees from working under these conditions.

22 (e) Such Defendants exercised centralized control of labor relations at Operating
 23 Entities. Such Defendants directed decisions regarding day-to-day employment matters at
 24 Operating Entities including, but not limited to, the policy not to pay Plaintiffs and other
 25 student-employees, salon hours of operation, hours of work for full and part time student-
 26 employees, student-employee discipline, and student-employee attire and appearance.

27 (f) Such Defendants' operations were interrelated with the Operating Entities and

1 entailed common management between them and the Operating Entities. Such
 2 Defendants promulgated policies that influenced or made, at least in some part, certain
 3 managerial decisions at the Paul Mitchell The School locations including, but not limited
 4 to, providing suggested retail prices and requiring that services be offered at a discount
 5 from the retail price offered at salons in the area,

6 (g) Such Defendants required Operating Entities to name Defendants as an
 7 additional insured party in its insurance policy and set requirements concerning
 8 computers and software the Operating Entities must use for record keeping.

9 (h) Such Defendants, to the extent they have publicly identified themselves or
 10 allowed themselves to be identified as partners, owners or co-owners of one or more Paul
 11 Mitchell The School locations, are now prohibited, as a matter of law, from denying such
 12 ownership status and the legal liability that results from such ownership status.

13 **V. GENERAL FACTS AND ALLEGATIONS**

14 38. Named Plaintiffs re-allege and incorporate by reference herein all allegations
 15 previously made in Paragraphs 1 through 38 above.

16 39. Defendants are, and at all times relevant to this Complaint were, an “employer”
 17 under the FLSA and the applicable state laws and/or regulations of Nevada. Defendants Von
 18 Curtis, Inc., P.M. Advanced Education Inc., Paul Mitchell Advanced Education LLC, John Paul
 19 Mitchell Systems, PMNV Las Vegas, LLC, PMCA Bakersfield, LLC and PMHBW LLC
 20 (collectively “Paul Mitchell Corporate Defendants”) are, and at all times relevant to this
 21 Complaint were, an “employer” under the applicable state laws and/or regulations of California.

22 40. Each Named Plaintiff was at all times relevant to this Complaint an “employee” of
 23 Defendants, as that term is defined under the FLSA and the applicable state laws and/or
 24 regulations of California and Nevada.

25 41. Defendants operate more than 100 beauty schools locations across the country
 26 under the business name “Paul Mitchell The School.” At the Paul Mitchell The School,
 27 Defendants provide cosmetology educational services to paying students pursuant to their

1 educational services business. Defendants also provide personal services to members of the
 2 public, for which they charge fees. Defendants offer cosmetology, barbering, esthetics or skin
 3 care, makeup artistry, manicuring and massage services to the public. Defendants also sell Paul
 4 Mitchell salon and beauty products to the public and to Plaintiffs and other student-employees.

5 42. Defendants' personal services business is designed to and does generate a profit
 6 for Defendants.

7 43. Defendants actively promote and advertise their personal services business to the
 8 public on their website and through other means. Defendants offer services to the public at a cost
 9 lower than that typically charged by other businesses that do not exploit the uncompensated labor
 10 provided by student-employees.

11 44. Defendants required their students, including Plaintiffs and other student-
 12 employees, to work as employees for all the time that they were subject to the control of
 13 Defendants on the salon floor. Plaintiffs and other student-employees were required to clock in
 14 and out for their scheduled shifts and, as discussed further below, were fined for tardiness or
 15 absences. Plaintiffs and other student-employees were expected to perform personal services for
 16 paying clients as well as perform other work such as cleaning and laundry.

17 45. Despite advertising that the student-employees would be trained and supervised by
 18 a licensed instructor at all times, Defendants did not provide such support. In fact, there was
 19 often no instructor present to supervise and educate as many as 50 students who were working on
 20 the salon floor at any given time. The student-employees performed all advertised services for
 21 Defendants' paying clients with little to no actual supervision.

22 46. Defendants required Plaintiffs and other students similarly situated to provide
 23 personal services as requested by Defendants' customers. Whether or not the service requested
 24 was something Plaintiffs or others students similarly situated needed to study to prepare for their
 25 licensing exams, they were nevertheless required to provide the service. Often, the customers did
 26 not provide sufficient variation in skills and tasks needed for licensing and certification.
 27 However, Plaintiffs and others similarly situated were required to provide the services as

1 requested, whether or not they needed or would benefit from experience in that area.
 2

3 47. Plaintiffs and other students similarly situated paid thousands of dollars apiece so
 4 that Defendants could hire instructors whose main function was to instruct the students and
 5 supervise their work as student-employees. Defendants, however, failed to provide the
 6 supervision required by law while the students were working on the salon floor. Defendants led
 7 Plaintiffs and others similarly situated to believe that they were paying tuition to learn the skills
 8 necessary to succeed in the glamorous profession of beauty and cosmetology. Instead,
 9 Defendants converted students into student-employees to profit from their free labor, both in the
 10 services the student-employees provided as well as the salon products they sold. Defendants
 11 alone benefited from the arrangement, turning students into salespeople and learning experiences
 12 into corporate profit.

13 48. The labor provided by Plaintiffs and the class members was and is essential to
 14 Defendants' personal services business. The work Defendants required the student-employees to
 15 do would not have been done by paid staff already in place had the student-employees not done
 16 the work, nor were Defendants' paid staff prevented from completing more productive tasks in
 17 less time because of their supervisory responsibilities over the students. Without the benefit of
 18 free labor from student-employees, Defendants would be required to secure additional employees
 19 in order to maintain their operations and the level of revenue they received from their personal
 20 services business or charge higher, and less competitive, rates.

21 49. Defendants compete with other profit-making businesses that provide the same
 22 personal services to the public, many of which do not utilize free labor from their employees.
 23 Defendants' failure to pay wages due to Plaintiffs and others similarly situated results in lower
 24 operating costs, which affords Defendants with a higher net income and a competitive advantage
 25 in the marketplace for personal salon services.

26 50. Defendants' use of unpaid labor to generate profits for their personal service
 27 business has the effect of depressing wages and employment opportunities generally among other
 28 workers in the industry who otherwise would have provided such personal services for at least

1 minimum wage. Other employers who provide the same personal services as Defendants' 2 business are unable to increase the wages of their employees or hire more workers to provide 3 such services while remaining competitive with Defendants' business.

4 51. Defendants could have provided the student services to the public for free or for a 6 nominal charge equal to the costs, if any, of the materials consumed. Defendants, however, 7 consciously chose to require the student-employees to provide beauty and cosmetology services, 8 and to sell Paul Mitchell salon and beauty products, solely for Defendants' benefit and profit. 9 Defendants did so in order for their business to operate at a profit and compete unfairly with 10 other personal services businesses that pay their employees at least the minimum wage required 11 by the FLSA and state laws.

12 52. While acting on the direct instruction of Defendants and discharging their duties 13 for them, Plaintiffs and other similarly situated student-employees have incurred work-related 14 expenses. Such expenses include but are not limited to the purchase of salon supplies; gloves, 15 combs, brushes, blow dryers, other tools and accessories necessary to service clients; and Paul 16 Mitchell salon and beauty products. Plaintiffs and other similarly situated student-employees 17 incurred these expenses and losses as a direct result of performing their job duties for Defendants.

18 53. Although Plaintiffs and other student-employees similarly situated received the 19 "clock hours" they needed in order to sit for their examinations to become licensed practitioners, 20 Defendants' for-profit personal services business was and continues to be irrelevant to those 21 educational goals. Defendants could have provided the same experience to students without 22 requiring them to sell products to the general public and without charging for the services 23 Plaintiffs and other similarly situated student-employees provided, other than a nominal charge 24 equal to the costs, if any, of the materials consumed. Moreover, Plaintiffs and others similarly 25 situated generally did not receive personal training or supervision from an instructor while they 26 worked in Defendants' salons. Instead, they performed exactly the same work as a non-student 27 employee would, providing personal services requested by paying customers according to 28 Defendants' list of available salon services.

1 54. Plaintiffs and others similarly situated performed work for Defendants under the
 2 guise of education and were not compensated at all for their labor. Defendants did not and
 3 continue to not pay their employees for all time during which the student-employees were subject
 4 to Defendants' control.

5 **A. Plaintiffs Morales, Palominos, and Handcock and the California Class.**

6 55. As a student-employee of the Paul Mitchell The School at the Sherman Oaks
 7 location, Plaintiff Morales paid approximately \$21,000 to attend the Cosmetology program. This
 8 program was advertised as consisting of 1600 "clock hours" of education and training.

9 56. While attending the program, Plaintiff Morales also worked as an unpaid
 10 employee for Defendants providing services as a hairstylist in Defendants' personal services
 11 business. Plaintiff Morales worked from at least 9 a.m. to 5 p.m., five days a week. If a client
 12 needed attention after 5 p.m., Plaintiff Morales had to stay later and finish servicing the client.

13 57. Pursuant to her work for Defendants in the salon, Plaintiff Morales consulted with
 14 clients and provided haircutting and styling services. Apart from providing direct services to
 15 clients, Plaintiff Morales also worked in the laundry, in the front desk area hosting and greeting
 16 clients, dispensed supplies and products to other student-employees, and cleaned the salon,
 17 including sweeping floors, washing bowls, and cleaning mirrors, mats, and chairs.

18 58. Although Defendants advertised that student-employees would be supervised by
 19 an instructor when providing services to the public, Plaintiff Morales and others regularly worked
 20 in the salon with only one to two instructors present to supervise as many as fifty student-
 21 employees. For many of her shifts, she and the other student-employees worked in the salon with
 22 minimal supervision or assistance from an instructor.

23 59. Completion of some services to Defendants' customers required the handling of
 24 chemical-based salon and beauty products. Defendants required Plaintiffs and other student-
 25 employees to wear gloves. Plaintiff Morales was forced to purchase gloves because Defendants
 26 did not provide her with gloves to service their paying customers.

27 60. Defendants pressured Plaintiff Morales to sell Paul Mitchell products to

1 customers. Plaintiff Morales never received any commission or pay for selling products to
 2 customers.
 3

4 61. As a student-employee of the Paul Mitchell The School at the East Bay location,
 5 Plaintiff Palominos paid approximately \$19,000 to attend the Cosmetology program.
 6

7 62. While attending the program, Plaintiff Palominos also worked as an unpaid
 8 employee for Defendants providing services as a hairstylist in Defendants' personal services
 9 business. Plaintiff Palominos worked from at least 9:30 a.m. to 5:30 p.m., five days a week. If a
 10 client needed attention after 5:30 p.m., Plaintiff Palominos had to stay later and finish servicing
 11 the client.
 12

13 63. Pursuant to her work for Defendants in the salon, Plaintiff Palominos consulted
 14 with clients and provided haircutting and styling services. Apart from providing direct services
 15 to clients, Plaintiff Palominos also worked in the laundry, in the color bar preparing hair dyes for
 16 clients, washed dishes and brushes, and cleaned the salon.
 17

18 64. Although Defendants advertised that student-employees would be supervised by
 19 an instructor when providing services to the public, for many of her shifts, Plaintiff Palominos
 20 and the other student-employees worked in the salon with minimal supervision or assistance from
 21 an instructor.
 22

23 65. Defendants pressured Plaintiff Palominos to sell Paul Mitchell products to
 24 customers. Plaintiff Palominos never received any commission or pay for selling products to
 25 customers.
 26

27 66. As a student-employee of the Paul Mitchell The School at the Fresno location,
 28 Plaintiff Handcock paid approximately \$18,000 to attend the Cosmetology program. This
 29 program was advertised as consisting of 1600 "clock hours" of education and training.
 30

31 67. While attending the program, Plaintiff Handcock also worked as an unpaid
 32 employee for Defendants providing services as a hairstylist in Defendants' personal services
 33 business. Plaintiff Handcock worked from at least 9 a.m. to 5 p.m., five days a week.
 34

35 68. Pursuant to her work for Defendants in the salon, Plaintiff Handcock consulted
 36

1 with clients and provided haircutting and styling services. Apart from providing direct services
 2 to clients, Plaintiff Handcock also worked in the laundry, dispensed supplies and products to
 3 other student-employees, and cleaned the salon, including wiping counters, sweeping floors, and
 4 taking out the garbage.

5 69. Although Defendants advertised that student-employees would be supervised by
 6 an instructor when providing services to the public, Plaintiff Handcock and others regularly
 7 worked in the salon with only one to two instructors present to supervise as many as sixty
 8 student-employees. For many of her shifts, she and the other student-employees worked in the
 9 salon with minimal supervision or assistance from an instructor.

10 70. Defendants pressured Plaintiff Handcock to sell Paul Mitchell products to
 11 customers. Plaintiff Handcock never received any commission or pay for selling products to
 12 customers.

13 71. Plaintiffs Morales, Palominos, and Handcock received no compensation for their
 14 work and no records showing the hours they worked.

15 72. While working as student-employees, Plaintiffs Morales, Palominos, and
 16 Handcock routinely worked throughout their shifts without being provided uninterrupted 30-
 17 minute meal breaks and 10-minute rest breaks.

18 73. Upon information and belief, all California student-employee class members
 19 performed or perform job duties of substantially similar nature as Plaintiffs Morales, Palominos,
 20 and Handcock and under the same terms and conditions.

21 74. Plaintiff Morales, Palominos, and Handcock are aware of Defendants' policy and
 22 practices regarding absences. Defendants imposed a fine on student-employees of \$12 per hour
 23 for hours student-employees worked to make up time that they were scheduled to work, but
 24 missed, in Paul Mitchell The School salons. On information and belief, student-employees who
 25 did not pay the fine and did not make up time for absences were not permitted to graduate from
 26 the program.

27 75. Student-employees were required to purchase items from Defendants which were

1 necessary to service paying customers. Defendants coerced Plaintiffs Morales, Handcock, and
 2 Palominos to make such purchases. For example, Defendants forced student-employees to buy a
 3 “student kit” consisting of brushes, combs, and other salon tools and accessories, including Paul
 4 Mitchell products. Student-employees used the items contained in “student kit” to provide
 5 services to Defendants’ customers. “Student kit” items needed to be replaced on occasion at
 6 student-employees’ own expense.

7

8 **B. Plaintiff Thomas and the Nevada Class.**

9 76. As a student-employee of the Paul Mitchell The School at the Las Vegas, Nevada
 10 location, Plaintiff Thomas paid approximately \$18,000 to attend the Cosmetology program. This
 11 program was advertised as consisting of 1800 “clock hours” of education and training.

12 77. While attending the program, Plaintiff Thomas also worked as an unpaid
 13 employee for Defendants providing services as a hairstylist in Defendants’ personal services
 14 business. Plaintiff Thomas worked from 5 p.m. to 10 p.m., four days a week while enrolled at
 15 Paul Mitchell The School part-time. Plaintiff Thomas later enrolled as a full-time student and
 16 worked from 9 a.m. to 5 p.m., five days a week. If a client needed attention after his work shift,
 17 Plaintiff Thomas had to stay later and finish servicing the client and clean up.

18 78. Pursuant to his work for Defendants in the salon, Plaintiff Thomas consulted with
 19 clients and provided haircutting and styling services. Apart from providing direct services to
 20 clients, Plaintiff Thomas also worked in the laundry, and cleaned the salon, including washing
 21 bowls and dishes. He also worked as a receptionist, performing duties such as scheduling clients,
 22 taking calls, checking clients in, and offering beverages to clients.

23 79. Although Defendants advertised that student-employees would be supervised by
 24 an instructor when providing services to the public, Plaintiff Thomas and others regularly worked
 25 in the salon with only three to four instructors present to supervise as many as 100 student-
 26 employees. For many of his shifts, he and other student-employees worked in the salon without
 27 adequate supervision.

28 80. Defendants pressured Plaintiff Thomas to sell Paul Mitchell products to

1 customers. During his enrollment at Paul Mitchell The School, Plaintiff Thomas was required to
 2 meet monthly sales quotas and obtain an instructor's signature verifying that he achieved the
 3 quotas. Defendants Plaintiff Thomas never received any commission or pay for selling products
 4 to customers.

5 81. At the salon, the student-employees were required to use Paul Mitchell products.
 6 When they ran out of a product, the student-employees were required to buy the product from
 7 Paul Mitchell The School. Although the products were intended for use on and were in fact used
 8 to service paying clients, Paul Mitchell The School did not reimburse the student-employees.
 9 Plaintiff Thomas purchased products from Paul Mitchell The School for use on clients with his
 10 own money and was not reimbursed.

11 82. Like the California class, Nevada student-employees were also required to
 12 purchase items necessary to service paying customers. Defendants required Plaintiff Thomas to
 13 buy a "student kit" consisting of brushes, combs, and other salon tools and accessories. Plaintiff
 14 Thomas used the items contained in "student kit" to provide services to Defendants' customers.
 15 Throughout the time Plaintiff Thomas provided services to Defendants' customers, some items in
 16 the "student kit" required replacement. Defendant would not pay to replace "student kit" items.
 17 Plaintiff Thomas paid to replace a blow dryer needed to provide haircutting and styling services
 18 to Defendants' customers.

19 83. Plaintiff Thomas received no compensation for his work and no records showing
 20 the hours he worked.

21 84. Upon information and belief, all Nevada student-employee class members
 22 performed or perform job duties of substantially similar nature as Plaintiff Thomas and under the
 23 same terms and conditions.

24 85. Plaintiff Thomas and other student-employees were subject to the same policy
 25 regarding fines for making up absences. Defendants imposed a fine of \$12 per hour to make up
 26 hours that student-employees were scheduled to work, but missed, in Paul Mitchell The School
 27 salons. Student-employees who did not pay the fine and did not make up time for a certain

1 amount of absences were not permitted to graduate from the program.

2 86. By the time he completed the program, Plaintiff Thomas had accumulated
 3 approximately \$500 in fines for making up missed hours. Plaintiff Thomas necessarily had to
 4 miss some class time because he worked another job while attending Paul Mitchell The School.
 5 Defendants required Plaintiff Thomas to pay the fines before Defendants would release
 6 information necessary to receive his license from to the state cosmetology board.

7 **VI. CALIFORNIA CLASS ALLEGATIONS**

8 87. Plaintiffs Morales, Palominos, and Handcock re-allege and incorporate by
 9 reference herein all allegations in the preceding paragraphs of this complaint.

10 88. The California Plaintiffs bring the Second through Ninth Causes of Action under
 11 the California Labor Code, California state law, and the California Unfair Competition Law for
 12 Defendants' violations of California's wage-and-hour laws on behalf of the following proposed
 13 class, the members of which have all been damaged by Defendants' above-described conduct,
 14 and who are referred to herein as the "California Class": "all persons who, on or after October
 15 25, 2009, performed or will perform personal services for customers, performed or will perform
 16 cleaning, reception, or support services, or sold beauty products on behalf of Paul Mitchell The
 17 School while enrolled at a Paul Mitchell The School salon or beauty school in California."

18 89. The proposed California Class is brought, and may properly be maintained, as a
 19 class action under Fed. R. Civ. P. 23(a), (b)(2) and (b)(3). The California Class is so numerous
 20 that joinder of all members is impracticable. Common questions of law and fact exist as to all
 21 members of the California Class that predominate over any questions affecting individual
 22 members, including but not limited to the following:

23 i. Whether Plaintiffs and the California Class Members performed
 24 services for Paul Mitchell Corporate Defendants as "employees"
 25 within the meaning of the California Labor Code and wage orders;
 26 ii. Whether Paul Mitchell Corporate Defendants failed and continue to
 27 fail to fully pay the California Class for all hours worked for Paul

1 Mitchell Corporate Defendants' personal services business in
 2 violation of California Labor Code §§ 200 *et. seq.* and § 1197 and
 3 California Business and Professions Code §§ 17200 *et. seq.*;

4

5 iii. Whether Paul Mitchell Corporate Defendants failed and continue to
 6 fail to fully pay the California Class overtime premium
 7 compensation for all hours worked for Paul Mitchell Corporate
 8 Defendants' personal services business in violation of California
 9 Labor Code §§ 510, 1194 *et. seq.* and California Business and
 10 Professions Code §§ 17200 *et. seq.*;

11

12 iv. Whether Paul Mitchell Corporate Defendants failed and continue to
 13 fail to provide uninterrupted 30 minute meal periods and 10 minute
 14 rest breaks to the California Class in violation of California Labor
 15 Code §§ 226.7 and 512 and California Business and Professions
 16 Code §§ 17200 *et. seq.*;

17

18 v. Whether Paul Mitchell Corporate Defendants failed and continue to
 19 fail to make, keep, preserve and/or timely furnish records of daily
 20 hours worked, including the start and end of each work period,
 21 meal periods and wages earned in violation of California Labor
 22 Code § 226 and California Business and Professions Code
 23 §§ 17200 *et. seq.*;

24

25 vi. Whether Paul Mitchell Corporate Defendants failed and continue to
 26 fail to fully pay the California Class all wages earned and due at the
 27 time of separation in violation of California Labor Code §§ 201-
 28 203 and California Business and Professions Code §§ 17200 *et.*
seq.;

29

30 vii. Whether Paul Mitchell Corporate Defendants failed and continue to
 31 fail to reimburse the California Class for necessary business

expenses in violation of California Labor Code §§ 2802 and 450(a) and California Business and Professions Code §§ 17200 *et. seq.*;

viii. Whether Paul Mitchell Corporate Defendants have coerced or compelled California Class Members to patronize Defendants and/or other companies in the purchase of salon and beauty products and/or supplies, salon tools and accessories, and other items in violation of California Labor Code § 450(a), warranting restitution under California Business and Professions Code §§ 17200 *et. seq.*;

ix. Whether Defendants collected unlawful fines from Paul Mitchell student-employees in violation of California Labor Code § 2928 and California Business and Professions Code §§ 17200 *et. seq.*;

- x. Whether Defendants were unjustly enriched by collecting unlawful fines;

xi. Whether Defendants' conduct is "unlawful", "unfair", or "fraudulent" under the California Business and Professions Code §§ 17200 *et. seq.*;

xii. Whether Paul Mitchell Corporate Defendants should be enjoined from continuing its unlawful practices; and

xiii. The proper measure of damages sustained by the California Class Members and the restitution owed to them.

90. Plaintiffs Morales, Palominos, and Handcock's claims are typical of those of the California Class. Like other members of the California Class, Plaintiffs were subjected to Paul Mitchell Corporate Defendants' policy and practice of requiring that its students provide unpaid labor to support its personal services business under conditions tantamount to employment under the California Labor Code and IWC Wage Orders and failing to provide uninterrupted 30-minute meal periods and 10-minute rest periods during the course of their workdays. Like the other

1 California Class Members, Plaintiffs were also subjected to Paul Mitchell Corporate Defendants' 2 policy and practice of failing to maintain accurate and itemized wage statements and refusing to 3 reimburse for necessary business expenses. Plaintiffs' job duties while working for Paul Mitchell 4 Corporate Defendants' personal services business were also typical of other members of the 5 California Class. Several Plaintiffs, like other members of the class, were subjected to Paul 6 Mitchell Corporate Defendants' common policy and practice of imposing fines for absences. 7

8 91. Plaintiffs Morales, Palominos, and Handcock will fairly and adequately represent 9 and protect the interests of the California Class because they have no disabling conflicts of 10 interest that would be antagonistic to other members of the California Class. Plaintiffs have 11 retained counsel who are competent and experienced in class action wage-and-hour and Section 12 17200 litigation.

13 92. Paul Mitchell Corporate Defendants have acted on grounds that apply generally to 14 the California Class. Accordingly, injunctive and declaratory relief is appropriate for the 15 California Class as a whole.

16 93. Class treatment is superior to alternative methods to adjudicate this dispute 17 because Plaintiffs Morales, Palominos, and Handcock and the similarly situated student- 18 employees have suffered similar treatment and harm as a result of systematic policies and 19 practices, and because absent a class action, Paul Mitchell Corporate Defendants' unlawful 20 conduct will likely continue un-remedied and unabated given that the damages suffered by 21 individual class members are small compared to the expense and burden of individual litigation. 22 Class certification is also superior because it will obviate the need for unduly duplicative 23 litigation which might result in inconsistent judgments about Paul Mitchell Corporate 24 Defendants' practices.

25 **VII. FLSA COLLECTIVE ACTION ALLEGATIONS**

26 94. Plaintiffs Morales, Palominos, Handcock, and Thomas re-allege and incorporate 27 by reference all allegations in the preceding paragraphs of this complaint..

28 95. Plaintiffs Morales, Palominos, Handcock, and Thomas bring the First Cause of

1 Action as a collective action pursuant to the FLSA, Section 16(b), 29 U.S.C. § 216(b), on behalf
 2 of themselves and: "all persons nationwide who, on or after October 25, 2010, performed or will
 3 perform personal services for customers, performed or will perform cleaning, reception, or
 4 support services, or sold beauty products on behalf of Paul Mitchell The School while enrolled at
 5 a Paul Mitchell The School salon or beauty school."

6 96. At all relevant times, Plaintiffs Morales, Palominos, Handcock, and Thomas and
 7 the other Nationwide FLSA Collective Action Members have been similarly situated, have had
 8 substantially similar job requirements and job duties and performed their work without receiving
 9 any compensation. Moreover, they have been subject to Defendants' common decisions,
 10 policies, programs, practices, procedures, protocols, routines, and rules that willfully misclassify
 11 the Collective Action Members as "students" during the periods of time that they operate as
 12 employees of Defendants and willfully fail to keep records required by the FLSA.

13 97. Questions of law and fact common to Plaintiffs and the Nationwide FLSA
 14 Collective Action Members include but are not limited to the following:

- 15 i. Whether Plaintiffs and the Collective Action Members performed
 16 services for Defendants as "employees" within the meaning of the
 17 FLSA;
- 18 ii. Whether Defendants failed and continue to fail to pay Plaintiffs and
 19 the Collective Action Members for all hours worked at the
 20 minimum wage in violation of the FLSA, 29 U.S.C. §§ 201 *et. seq.*;
- 21 iii. Whether Defendants failed and continue to fail to pay Plaintiffs and
 22 the Collective Action Members for all overtime hours at one and
 23 one half times the regular rate or applicable minimum wage in
 24 violation of the FLSA, 29 U.S.C. §§ 201 *et. seq.*;
- 25 iv. Whether Defendants misclassified Plaintiffs and the Nationwide
 26 FLSA Collective Action Members as students rather than
 27 employees during the periods of time they worked for Defendants'

1 personal services business;

2 v. Whether Defendants' violations are "willful" within the meaning of
 3 the FLSA, 29 U.S.C. §§ 201 *et. seq.*;

4 vi. Whether Defendants failed and continue to fail to maintain accurate
 5 records of hours worked in violation of the FLSA, 29 U.S.C.
 6 §§ 201 *et. seq.*;

7 vii. Whether Defendants are liable to Plaintiffs and the Nationwide
 8 FLSA Collective Action Members; and

9 viii. Whether Plaintiffs and the Nationwide FLSA Collective Action
 10 Members can be made whole by payment of damages.

11 98. The First Cause of Action is properly brought under and maintained as an opt-in
 12 collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. 216(b). The Nationwide FLSA
 13 Collective Action Members are readily ascertainable. For purposes of notice and other purposes
 14 related to this action, their names and addresses are readily available from Defendants. Notice
 15 can be provided to the Nationwide FLSA Collective Action Members via first class mail to the
 16 last address known to Defendants.

17 **VIII. NEVADA CLASS ALLEGATIONS**

18 99. Plaintiff Thomas re-alleges and incorporates by reference herein all allegations in
 19 the preceding paragraphs of this complaint.

20 100. Plaintiff Thomas brings the Tenth through Fourteenth Causes of Action under the
 21 Nevada Revised Statutes and the Nevada Constitution for Defendants' violations of Nevada's
 22 wage and hour laws on behalf of the following proposed class, the members of which have all
 23 been damaged by Defendants' above-described conduct, and who are referred to herein as the
 24 "Nevada Class": "all persons who, on or after October 25, 2009, or within the applicable statute
 25 of limitations period, performed or will perform personal services for customers, performed or
 26 will perform cleaning, reception, or support services, or sold beauty products on behalf of Paul
 27 Mitchell The School while enrolled at a Paul Mitchell The School salon or beauty school in

Nevada.”

101. The Nevada Class includes a subclass of student-employees who were required to pay Defendants fines of \$12 per hour for hours worked to make up time that they were scheduled to work, but missed, in Paul Mitchell The School salons (“Nevada Absence Fine Subclass”).

102. The proposed Nevada Class and subclass are brought, and may properly be maintained, as a class action under Fed. R. Civ. P. 23(a), (b)(2) and (b)(3). The Nevada Class and Subclass are so numerous that joinder of all members is impracticable. Common questions of law and fact exist as to all members of the Nevada Class and Subclass that predominate over any questions affecting individual members, including but not limited to the following:

- i. Whether Plaintiff Thomas and the Nevada Class Members performed services for Defendants as “employees” within the meaning of the Nevada’s wage-and-hour laws;
- ii. Whether Defendants failed and continue to fail to fully pay the Nevada Class for all hours worked for Defendants’ personal services business in violation of the Nevada Constitution, Article 15, Section 16 and Nevada Revised Statutes §§ 608.016 and 608.250;
- iii. Whether Defendants failed and continue to fail to fully pay the Nevada Class overtime premium compensation for all hours worked for Defendants’ personal services business in violation of NRS § 608.018;
- iv. Whether Defendants failed and continue to fail to fully pay the Nevada Class all wages earned according to schedule in violation of the Nevada Constitution, Article 15, Section 16 and NRS § 608.060;
- v. Whether Defendants failed and continue to fail to fully pay the Nevada Class all wages earned and due at the time of separation in

violation of NRS §§ 608.020, 608.030, and 608.040;

vi. Whether Defendants were unjustly enriched by collecting unlawful fines and owe restitution to the Nevada Absence Fine Subclass;

vii. Whether Defendants should be enjoined from continuing their unlawful practices; and

viii. The proper measure of damages sustained by the Nevada Class Members and the restitution owed to them.

103. Plaintiff Thomas' claims are typical of those of the Nevada Class and Subclass.

Like other members of the Nevada Class and Subclass, Plaintiff Thomas was subjected to Defendants' policy and practice of requiring that students provide unpaid labor to support Defendants' personal services business under conditions tantamount to employment under the Nevada Revised Statutes and Nevada Constitution. Plaintiff Thomas' job duties while working for Defendants' personal services business were also typical of other members of the Nevada Class. Plaintiff Thomas, like other members of the class, was subjected to Defendants' common policy and practice of imposing fines for absences. Plaintiff Thomas will fairly and adequately represent and protect the interests of the Nevada Class because he has no disabling conflicts of interest that would be antagonistic to other members of the Nevada Class. Plaintiff Thomas has retained counsel who are competent and experienced in class action wage-and-hour and commercial litigation.

104. Defendants have acted on grounds that apply generally to the Nevada Class and Subclass. Accordingly, injunctive and declaratory relief are appropriate for the Nevada Class and Subclass as a whole.

105. Class treatment is superior to alternative methods to adjudicate this dispute because Plaintiff Thomas and the similarly situated student-employees have suffered similar treatment and harm as a result of systematic policies and practices, and because absent a class action, Defendants' unlawful conduct will likely continue un-remedied and unabated given that the damages suffered by individual class members are small compared to the expense and burden

1 of individual litigation. Class certification is also superior because it will obviate the need for
 2 unduly duplicative litigation which might result in inconsistent judgments about Defendants'
 3 practices.
 4

5 **FIRST CAUSE OF ACTION**

6 **Unlawful Failure To Pay Minimum Wages And Overtime Due
 7 (FLSA Minimum Wage and Overtime Violations, 29 U.S.C. §§ 201 *et. seq.*;
 Brought by Plaintiffs Morales, Palominos, Handcock, and Thomas on Behalf of Themselves
 8 and the Nationwide FLSA Collective Action Members Against All Defendants)**

9 106. Plaintiffs Morales, Palominos, Handcock, and Thomas, on behalf of themselves
 10 and all Nationwide FLSA Collective Action Members, re-allege and incorporate by reference the
 11 allegations made in all prior paragraphs as if fully alleged herein.

12 107. At all relevant times, Defendants have been, and continue to be, "employers"
 13 engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all
 14 relevant times, Defendants have employed, and continue to employ the Nationwide FLSA
 15 Collective Action Members as "employee[s]" within the meaning of the FLSA. At all relevant
 16 times, Defendants have had gross operating revenues in excess of \$500,000.

17 108. Plaintiffs Morales, Palominos, Handcock, and Thomas previously signed and filed
 18 consents to sue in this action pursuant to 16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256.
 19 Additional Nationwide FLSA Collective Action Members will sign consent to sue forms and will
 20 join this action as plaintiffs in the future.

21 109. At all relevant times, Defendants have required and continue to require the
 22 student-employee members of the Nationwide FLSA Collective Action to work for their personal
 23 services business without compensation at the minimum wage as required by the FLSA, 29
 24 U.S.C. § 206.

25 110. At all relevant times, Plaintiffs and the other FLSA Collective Action Plaintiffs
 26 regularly worked in excess of forty (40) hours per workweek and continue to do so.

27 111. At all relevant times, Defendants operated under and continue to operate under a
 28 decision, policy and plan, and under common policies, programs, practices, procedures,

1 protocols, routines and rules of willfully failing and refusing to pay the FLSA Collective Action
 2 Plaintiffs minimum wage for all hours worked and at time and a half rates for work in excess of
 3 forty (40) hours per workweek. At all relevant times, Defendants willfully, regularly and
 4 repeatedly failed, and continue to fail to make, keep and preserve accurate records required by the
 5 FLSA with respect to Plaintiffs and the other FLSA Collective Plaintiffs, including records
 6 sufficient to accurately determine the wages and hours of employment pertaining to Plaintiffs and
 7 other FLSA Collective Action Plaintiffs.

8 112. As a result of Defendants' violations of the FLSA, student-employee members of
 9 the Nationwide FLSA Collective Action suffered damages by being denied proper pay and
 10 overtime wages in accordance with Sections 206 and 207 of the FLSA.

11 113. This conduct constitutes "willful" violations of the FLSA within the meaning of
 12 29 U.S.C. § 255(a). Because Defendants willfully violated the FLSA, a three-year statute of
 13 limitations applies to such violations, pursuant to 29 U.S.C. § 255.

14 114. As a result of Defendants' unlawful acts, Plaintiffs Morales, Palominos,
 15 Handcock, and Thomas and the other Nationwide FLSA Collective Action Members are entitled
 16 to recover all damages for unpaid minimum wages and overtime compensation in amounts to be
 17 determined at trial, liquidated (double) damages, and/or prejudgment interest, attorneys' fees,
 18 costs, and such other legal and equitable relief as this Court deems just and proper.

19 **SECOND CAUSE OF ACTION**

20 **Unfair Competition**
 21 **(California Business and Professions Code §§ 17200-17208;**
 22 **Brought by Plaintiffs Morales, Palominos, and Handcock on Behalf of**
 23 **Themselves and the California Class Members Against All Defendants)**

24 115. Plaintiffs Morales, Palominos, and Handcock, on behalf of themselves and the
 25 California Class Members, re-allege and incorporate by reference the allegations made in all
 26 other paragraphs in this complaint as if fully alleged herein.

27 116. Defendants' unlawful conduct, as alleged herein, constitutes unfair competition
 28 within the meaning of Business and Professions Code Section 17200. This unfair, unlawful,

1 and/or fraudulent activity includes Defendants' establishment and use of policies and procedures
 2 which resulted in Defendants' failure to pay student-employees at least minimum wage for all
 3 time worked under the FLSA and/or California law, failure to pay overtime wages under the
 4 FLSA and/or California law, failure provide meal periods or pay meal period premium wages,
 5 failure to provide all required rest periods or pay rest period premium wages, failure to provide
 6 timely payment of final wages, failure to provide accurate and itemized wage statements, and
 7 failure to reimburse business expenses. Additionally, Defendants' policy and practice of
 8 compelling and/or coercing Plaintiffs to patronize Defendants and other person in violation of
 9 California Labor Code § 450(a) constitutes unlawful and/or unfair and/or fraudulent activity
 10 prohibited by Section 17200.

117. Due to Defendants' unfair, unlawful, and/or fraudulent business practices,
 12 Defendants have gained a competitive advantage over other comparable companies doing
 13 business in the State of California that comply with their obligations to pay minimum wage for
 14 all hours worked; pay overtime premium wages for all hours worked; provide all required meal
 15 periods; authorize, permit and provide all required rest periods; provide itemized wage
 16 statements; reimburse business expenses; timely pay all unpaid wages following separation of
 17 employment; and comply with state law regarding coerced purchases from employees.

118. As a result of its unlawful, unfair, and/or fraudulent acts, Defendants reaped and
 19 continue to reap unfair benefits and illegal profits at the expense of Plaintiffs Morales,
 20 Palominos, and Handcock and the California Class Members. Defendants should be enjoined
 21 from this activity and made to disgorge these ill-gotten gains and restore to Plaintiffs and the
 22 California Class Members the wrongfully withheld wages and compensation and to provide
 23 restitution for the unlawful withholding and the delay in receiving wages and compensation due,
 24 pursuant to Section 17200. Defendants should also be enjoined from coercing employees to
 25 purchase items from Defendants and made to disgorge these ill-gotten gains and restore to
 26 Plaintiffs and the California Class Members the wrongfully collected proceeds.

119. Accordingly, Plaintiffs Morales, Palominos, and Handcock and the California

1 Class Members respectfully request the Court award judgment and relief in their favor to provide
 2 restitution and other types of equitable relief.
 3

4 **THIRD CAUSE OF ACTION**

5 **Unlawful Failure To Pay All Wages Due Under California Law**
 6 **(California Labor Code §§ 200 *et. seq.*, 1194 *et. seq.*, 1197 *et. seq.*;**
Brought by Plaintiffs Morales, Palominos, and Handcock on Behalf of Themselves
and the California Class Members Against All Paul Mitchell Corporate Defendants)

7 120. Plaintiffs Morales, Palominos, and Handcock, on behalf of themselves and the
 8 California Class Members, re-allege and incorporate by reference the allegations made in all prior
 9 paragraphs as if fully alleged herein.
 10

11 121. During all relevant times, Plaintiffs Morales, Palominos, and Handcock and all
 12 members of the California Class were entitled to “wages” for labor or services rendered to Paul
 13 Mitchell Corporate Defendants within the meaning of California Labor Code § 200(a).
 14

15 122. During all relevant times, Paul Mitchell Corporate Defendants engaged in a
 16 widespread pattern and practice of failing to pay the statutory minimum wage and overtime rates
 17 to its California student-employees for the hours they worked for Paul Mitchell Corporate
 18 Defendants’ personal services business. Paul Mitchell Corporate Defendants’ conduct deprives
 19 Plaintiffs Morales, Palominos, and Handcock and the other members of the California Class of
 20 full and timely payment for all hours worked in violation of the California Labor Code §§ 200 *et.*
seq. and 1194 *et. seq.*
 21

22 123. As of result of Paul Mitchell Corporate Defendants’ willful and unlawful failure to
 23 pay Plaintiffs Morales, Palominos, and Handcock and the other members of the California Class
 24 all earned wages due, Plaintiffs and Class Members are entitled to recover their unpaid wages,
 25 pre-judgment interest, and costs of suit and reasonable attorney’s fees under both California
 26 Labor Code §1194 and California Code of Civil Procedure § 1021.5.
 27

28 ///

FOURTH CAUSE OF ACTION

**Unlawful Failure To Pay Overtime Due Under California Law
(California Labor Code §§ 510, 1194, *et seq.* and Wage Order No. 2-2001;
Brought by Plaintiffs Morales, Palominos, and Handcock on Behalf of Themselves
and the California Class Members Against All Paul Mitchell Corporate Defendants)**

124. Plaintiffs Morales, Palominos, and Handcock, on behalf of themselves and the California Class Members, re-allege and incorporate by reference the allegations made in all prior paragraphs as if fully alleged herein.

125. At relevant times, Plaintiffs and the members of the California Class were employees of Paul Mitchell Corporate Defendants, covered by California Labor Code Sections 510 and 1194 and Wage Order 2-2001.

126. During all relevant times, Defendants required, and continues to require, the California Class Members to work in excess of eight hours per workday and forty hours per workweek.

127. During all relevant times, California Labor Code § 510 and Wage Order No. 2-2001 required that an employer compensate at one and one-half times the employee's regular rate of pay (1) all work performed by an employee in excess of eight hours in one work day and 40 hours in any one workweek and (2) all work performed by an employee during the first eight hours worked on the seventh day of work in any one workweek.

128. Defendants knowingly and willfully failed to pay overtime wages earned and due to its student-employees who worked in excess of eight hours per workday and forty hours per workweek. Defendants' conduct deprives Plaintiffs and members of the California Class of full and timely payment for all overtime hours worked, in violation of the California Labor Code.

129. As of result of Defendants' willful and unlawful failure to pay Plaintiffs Morales, Palominos, and Handcock and the other members of the California Class proper earned overtime wages, Plaintiffs and Class Members are entitled to recover their unpaid overtime compensation, pre-judgment interest, costs of suit and reasonable attorney's fees.

FIFTH CAUSE OF ACTION

**Unlawful Failure To Provide Meal And Rest Periods
(California Labor Code §§ 226.7 and 512 and Wage Order No. 2-2001;
Brought by Plaintiffs Morales, Palominos, and Handcock on Behalf of Themselves
and the California Class Members Against All Paul Mitchell Corporate Defendants)**

130. Plaintiffs Morales, Palominos, and Handcock, on behalf of themselves and the California Class Members, re-allege and incorporate by reference the allegations made in all prior paragraphs as if fully alleged herein.

131. At relevant times, Plaintiffs and the members of the California Class were employees of Paul Mitchell Corporate Defendants, covered by California Labor Code Sections 512 and 226.7 and Wage Order 2-2001.

132. Plaintiffs Morales, Palominos, and Handcock and the California Class Members
were regularly compelled to work in excess of five hours a day and 10 hours a day without Paul
Mitchell Corporate Defendants providing half-hour meal periods in which they were relieved of
all duties, as required by California Labor Code §§ 226.7 and 512 and Wage Order No. 2-2001, §
11.

133. Defendants also failed to provide duty-free meal periods to Plaintiffs and the California Class members and failed to pay provide premium wages for missed meal periods. Defendants' policies and procedures ensured that its student-employees would not receive all legally required meal periods. Defendants' policies and procedures also ensured that student-employees did not receive premium wages for missed meal periods, in violation of California law.

134. Because Defendants failed to provide uninterrupted off-duty meal periods, Defendants are liable to Plaintiffs Morales, Palominos, and Handcock and the California Class Members for one hour of additional pay at the regular rate of compensation for each workday that the full and uninterrupted off-duty meal periods were not provided, pursuant to California Labor Code §§ 226.7 and Wage Order No. 2-2001, § 11(D).

135. Plaintiffs Morales, Palominos, and Handcock and the California Class Members

were regularly suffered, permitted, and compelled to work over a four hour period (or major fraction thereof) without Defendants authorizing and permitting them to take paid 10-minute rest periods in which they were relieved of all duties, as required by California Labor Code §§ 226.7 and Wage Order No. 2-2001, § 12. Defendants also failed to pay premium wages to Plaintiffs and similarly situated student-employees for missed rest periods.

136. Defendants' policies and procedures ensured that Plaintiffs and similarly situated student-employees would not receive all legally required rest periods. Defendants' policies and procedures also ensured that Plaintiffs and similarly situated student-employees did not receive premium wages for missed rest periods.

137. Because Defendants failed to authorize and permit uninterrupted off-duty rest periods, they are liable to Plaintiffs Morales, Palominos, and Handcock and the California Class Members for one hour of additional pay at the regular rate of compensation for each workday that the full and uninterrupted off-duty meal periods were not provided, pursuant to California Labor Code §§ 226.7 and Wage Order No. 2-2001, § 12(B).

138. Plaintiffs Morales, Palominos, and Handcock, individually and on behalf of the California Class Members, request recovery of meal-and-rest period compensation pursuant to California Labor Code §§ 226.7 and Wage Order No. 2-2001, as well as the assessment of any statutory penalties against Defendants, in a sum provided by the California Labor Code and/or other statutes. Further, Plaintiffs Morales, Palominos, and Handcock and the California Class Members are entitled to seek and recover reasonable costs and will seek attorneys' fees under California Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

**Unlawful Failure To Timely Pay All Wages Due Upon
Separation Of Employment Under California Law
(California Labor Code §§ 201, 202, and 203; Brought by
Plaintiffs Morales, Palominos, and Handcock on Behalf of Themselves and
the California Class Members Against All Paul Mitchell Corporate Defendants)**

139. Plaintiffs Morales, Palominos, and Handcock, on behalf of themselves and the

1 California Class Members, re-allege and incorporate by reference the allegations made in all prior
2 paragraphs as if fully alleged herein.
3

4 140. At all relevant times, Plaintiffs and the other members of the California Class were
5 employees of Paul Mitchell Corporate Defendants covered by Labor Code Sections 201 or 202.
6

7 141. Pursuant to Labor Code Sections 201 or 202, Plaintiffs and members of the
8 California Class were entitled upon separation of employment to timely payment of all wages
9 earned and unpaid prior to such separation. Discharged student-employees, *i.e.*, those who
10 graduated, were entitled to payment, immediately upon termination, of all wages earned and
11 unpaid prior to discharge. Student-employees who resigned, *i.e.*, interrupted or failed to
12 complete their studies, were entitled to payment, within 72 hours after giving notice of
13 resignation, of all wages earned and unpaid prior to resignation or, if they gave 72 hours previous
14 notice, they were entitled to payment, at the time of resignation, of all wages earned and unpaid
15 prior to resignation.
16

17 142. Paul Mitchell Corporate Defendants failed to pay Plaintiffs and members of the
18 California Class all wages earned and unpaid prior to separation of employment in accordance
19 with Labor Code Section 201 or 202. Plaintiffs are informed and believe and thereon allege that
20 at all relevant times within the applicable limitations period, Defendants maintained a policy or
21 practice of not paying unpaid wages to student-employees upon separation of employment.
22

23 143. Defendants' failure to timely pay Plaintiffs and members of the California Class
24 all wages earned prior to separation of employment in accordance with Labor Code Sections 201
25 or 202 was willful. Defendants had the ability to pay all wages earned by student-employees
26 prior to separation of employment in accordance with Labor Code Sections 201 or 202, but
27 intentionally adopted policies or practices incompatible with the requirements of those
28 provisions.
29

30 144. Pursuant to Labor Code Section 203, Plaintiffs and members of the California
31 Class are entitled to continuation of their wages, from the day their earned and unpaid wages
32 were due upon separation of employment until paid, up to a maximum of 30 days. Plaintiffs and
33

1 members of the California Class are entitled to recover the full amount of their unpaid wages,
 2 continuation wages under Section 203, and interest thereon, plus costs and attorney's fees.
 3

4 **SEVENTH CAUSE OF ACTION**

5 **Unlawful Failure To Provide Itemized Statements**
 6 **(California Labor Code §§ 226 and Wage Order No. 2-2001; Brought by Plaintiff Handcock**
on Behalf of the California Class Members Against All Paul Mitchell Corporate
Defendants)

7
 8 145. Plaintiff Handcock, on behalf of the California Class Members, re-allege and
 9 incorporate by reference the allegations made in all prior paragraphs as if fully alleged herein.

10 146. During all relevant times, Defendants intentionally failed to furnish to Plaintiff
 11 Handcock and the California Class Members, upon each payment of compensation, itemized
 12 statements accurately showing total hours worked, the applicable hourly rates in effect during
 13 each pay period and the corresponding hours worked at each hourly rate. Defendants have
 14 violated California Labor Code §226 by willfully failing to keep required payroll records
 15 accurately showing the hours Plaintiff Handcock and the California Class Members worked, the
 16 start and end of each work period, meal periods, gross wages earned, and net wages earned.

17 147. Defendants are liable for civil penalties pursuant to California Labor Code § 226.

18 148. Plaintiff Handcock and the California Class Members were damaged by these
 19 failures because, among other things, the failures led them to believe that they were not entitled
 20 to be paid wages or overtime, even though they were so entitled and because the failures hindered
 21 them from determining the amounts of wages and overtime compensation owed to them.

22 149. Plaintiff Handcock and the California Class Members are entitled to the amounts
 23 provided in California Labor Code § 226(e), injunctive relief pursuant to California Labor Code
 24 § 226(h), plus costs and attorney's fees.

25 **EIGHTH CAUSE OF ACTION**

26 **Coerced Purchases**
 27 **(California Labor Code §§ 17200, 450(a) *et. seq.*; Brought by Plaintiffs Morales,**
Palominos, and Handcock on Behalf of Themselves and the California Class Against All
Paul Mitchell Corporate Defendants)

102. Plaintiffs Morales, Palominos, and Handcock, on behalf of themselves and the California Class Members, re-allege and incorporate by reference the allegations made in all prior paragraphs as if fully alleged herein.

103. Defendants have compelled and/or coerced Plaintiffs and California Class Members to patronize Defendants by requiring them to purchase certain items, including but not limited to salon and beauty products and/or supplies, salon tools and accessories, or other items directly from Defendants and/or other persons in violation of California Labor Code § 450.

104. Defendants' actions were willful, fraudulent and oppressive, and were committed in conscious disregard of Plaintiffs' and California Class Members' rights.

105. Plaintiffs, on behalf of themselves and similarly situated California Class Members, are entitled to restitution under Business and Professions Code §17200, *et seq.*, and request relief as described below.

NINTH CAUSE OF ACTION

Unlawful Failure To Reimburse Business Expenses (California Labor Code § 2802: Brought by

**Plaintiffs Morales, Palominos, and Handcock on Behalf of Themselves and
the California Class Members Against All Paul Mitchell Corporate Defendants)**

150. Plaintiffs Morales, Palominos, and Handcock, on behalf of themselves and the California Class Members, re-allege and incorporate by reference the allegations made in all prior paragraphs as if fully alleged herein.

151. During all relevant times, Paul Mitchell Corporate Defendants violated California Labor Code § 2802 by failing to indemnify Plaintiffs Morales, Palominos, and Handcock and the California Class Members for all necessary business expenditures incurred as a direct consequence of Defendants' failure to provide salon and beauty supplies necessary to service paying customers, in addition to certain equipment (like gloves) necessary for the job on occasion. In order to provide the services advertised by Defendants and requested by its customers, Plaintiffs Morales, Palominos, and Handcock and the California Class Members purchased salon and beauty supplies. At all relevant times, Defendants was aware that student-

1 employees are not properly supplied with the necessary products and supplies and equipment to
 2 perform the job, and were required to purchase them, in violation of California Labor Code
 3 § 2802.

4 152. Defendants are required to indemnify its employees for all “necessary
 5 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
 6 her duties” pursuant to Section 2802, including losses to purchase and replace salon and beauty
 7 products and supplies, and equipment Plaintiffs and the California Class required to service
 8 Defendants’ customers and perform their job duties.

9 153. Pursuant to California Labor Code § 2802, Plaintiffs Morales, Palominos, and
 10 Handcock and the California Class Members are entitled to recover the full amount of their
 11 unreimbursed business expenses, reasonable attorney’s fees, and costs of suit.

12 **TENTH CAUSE OF ACTION**

13 **Unlawful Failure To Pay All Wages Due Under Nevada Law
 14 (Nevada Constitution Article 15, Section 16 and Nevada Revised
 15 Statutes §§ 608.016 and 608.250; Brought by Plaintiff Thomas on
 16 Behalf of Himself and the Nevada Class Members Against All Defendants)**

17 154. Plaintiff Thomas, on behalf of himself and the Nevada Class Members, re-alleges
 18 and incorporates by reference the allegations made in all prior paragraphs as if fully alleged
 19 herein.

20 155. At all relevant times, Plaintiff Thomas and the other members of the Nevada Class
 21 were employees of Defendants covered by N.R.S. §§ 608.016 and 608.250 and the Nevada
 22 Constitution.

23 156. At all relevant times, Defendants have required and continue to require the
 24 student-employee members of the Nevada Class to work for their personal services business
 25 without compensation at the minimum wage as required by the Nevada Constitution and N.R.S.
 26 §§ 608.016 and 608.250.

27 157. At all relevant times, Defendants operated under and continue to operate under a
 28 decision, policy and plan, and under common policies, programs, practices, procedures,

1 protocols, routines and rules of willfully failing and refusing to pay Plaintiff Thomas and the
 2 Nevada Class Members minimum wage for all hours worked.
 3

4 158. As of result of Defendants' willful and unlawful failure to pay Plaintiff Thomas
 5 and the other members of the Nevada Class proper earned wages, Plaintiff and Class Members
 6 are entitled to recover their unpaid wages, damages, injunctive relief, and attorney's fees and
 7 costs pursuant to Article 15, Section 16 of the Nevada Constitution and Nevada Revised Statutes
 8 §§ 608.016 and 608.250.
 9

ELEVENTH CAUSE OF ACTION

Unlawful Failure To Pay Overtime Wages Under Nevada Law (Nevada Revised Statutes § 608.018; Brought by Plaintiff Thomas on Behalf of Himself and the Nevada Class Members against All Defendants)

10 159. Plaintiff Thomas, on behalf of himself and the Nevada Class Members, re-alleges
 11 and incorporates by reference the allegations made in all prior paragraphs as if fully alleged
 12 herein.

13 160. At all relevant times, Plaintiff Thomas and the other members of the Nevada Class
 14 were employees of Defendants covered by N.R.S. § 608.018.

15 161. At all relevant times, Defendants have required and continue to require the
 16 student-employee members of the Nevada Class to work in excess of eight hours per workday
 17 and forty hours per workweek.

18 162. At all relevant times, N.R.S. § 608.018 required that an employer compensate all
 19 work performed by an employee in excess of eight hours in one work day or 40 hours in any one
 20 workweek at one and one-half times the employee's regular rate of pay. Defendants' conduct
 21 deprives members of the Nevada Class of full and timely payment for all overtime hours worked,
 22 in violation of Nevada law.

23 163. At all relevant times, Defendants operated under and continue to operate under a
 24 decision, policy and plan, and under common policies, programs, practices, procedures,
 25 protocols, routines and rules of willfully failing and refusing to pay Plaintiff Thomas and the
 26

1 Nevada Class Members overtime wages.

2 164. As of result of Defendants' willful and unlawful failure to pay Plaintiff Thomas
 3 and the other members of the Nevada Class proper earned overtime wages, Plaintiff and Class
 4 Members are entitled to injunctive relief, recovery of their unpaid overtime wages, damages, and
 5 attorney's fees and costs pursuant to N.R.S. § 608.018.

6 **TWELFTH CAUSE OF ACTION**

7 **Unlawful Failure To Timely Pay All Wages Upon Separation Of Employment
 (Nevada Revised Statutes § 608.020, 608.030, and 608.040;
 Brought by Plaintiff Thomas on Behalf of Himself and the Nevada
 Class Members Against All Defendants)**

8 165. Plaintiff Thomas, on behalf of himself and the Nevada Class Members, re-alleges
 9 and incorporates by reference the allegations made in all prior paragraphs as if fully alleged
 10 herein.

11 166. At all relevant times, Plaintiff Thomas and the other members of the Nevada Class
 12 were employees of Defendants covered by N.R.S. §§ 608.020 and 608.030.

13 167. Pursuant to N.R.S. §§ 608.020 or 608.030, Plaintiff and members of the Nevada
 14 Class were entitled upon separation of employment to timely payment of all wages earned and
 15 unpaid prior to such separation. Discharged student-employees, *i.e.*, those who graduated, were
 16 entitled to payment of all wages earned and unpaid prior to discharge immediately upon
 17 termination. Student-employees who resigned, *i.e.*, interrupted or failed to complete their studies,
 18 were entitled to payment of all wages earned and unpaid prior to resignation no later than the
 19 earlier of (1) the day on which the employee would have regularly been paid the wages or
 20 compensation, or (2) seven days after the employee resigned or quit.

21 168. Defendants failed to pay Plaintiff and members of the Nevada Class all wages
 22 earned and unpaid prior to separation of employment in accordance with N.R.S. §§ 608.20 or
 23 608.30. Plaintiff is informed and believe and thereon alleges that at all relevant times within the
 24 applicable limitations period, Defendants maintained a policy or practice of not paying student-
 25

employees upon separation of employment wages for all unpaid wages.

169. Defendants' failure to timely pay Plaintiff and members of the Nevada Class all wages earned prior to separation of employment in accordance with N.R.S. §§ 608.20 and 608.30 was willful. Defendants had the ability to pay all wages earned by student-employees prior to separation of employment in accordance with the law, but intentionally adopted policies or practices incompatible with the requirements of the law.

170. Pursuant to N.R.S. § 608.40, Plaintiff and members of the Nevada Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon separation of employment until paid, up to a maximum of 30 days. Plaintiffs and members of the Nevada Class are thus entitled to recover the full amount of their unpaid wages, continuation wages under N.R.S. § 608.40, and interest thereon.

THIRTEENTH CAUSE OF ACTION

**Unlawful Failure To Pay All Wages According To Schedule
(Nevada Revised Statutes § 608.060; Brought by Plaintiff Thomas on Behalf of
Himself and the Nevada Class Members Against All Defendants)**

171. Plaintiff Thomas, on behalf of himself and the Nevada Class Members, re-allege and incorporate by reference the allegations made in all prior paragraphs as if fully alleged herein.

172. At all relevant times, Plaintiff and the other members of the Nevada Class were employees of Defendants in private employment within the meaning of N.R.S. § 608.060.

173. Pursuant to Section 608.060, Plaintiff and members of the Nevada Class were entitled to payment of wages or compensation on at least a semi-monthly basis.

174. Defendants failed to pay Plaintiff and members of the Nevada Class all wages earned on at least a semi-monthly in accordance with N.R.S. § 608.060. Plaintiff is informed and believe and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained a policy or practice of not paying student-employees according to the schedule established by law.

175. Defendants' failure to timely pay Plaintiff and members of the Nevada Class all wages earned in accordance with N.R.S. § 608.060 was willful. Defendants had the ability to pay all wages earned by student-employees on at least a semi-monthly basis in accordance with the law, but intentionally adopted policies or practices incompatible with the requirements of the law.

176. Pursuant to N.R.S. § 608.060, Plaintiff and members of the Nevada Class are entitled to recover the full amount of their unpaid wages and interest thereon, plus attorney's fees and costs.

FOURTEENTH CAUSE OF ACTION

Unjust Enrichment/Restitution Under Nevada Law (Brought by Plaintiff Thomas on Behalf of Himself and Nevada Class Members Against All Defendants)

177. Plaintiff Thomas, on behalf of himself and the Nevada Class Members, re-alleges and incorporates by reference the allegations made in all prior paragraphs as if fully alleged herein.

178. Under Nevada law, “unjust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.” *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 363 n. 2 (1987). The essential elements of unjust enrichment are “a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit.” *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212 (1981).

179. Defendants have received a substantial monetary benefit from fines imposed on Plaintiff and Class Members under circumstances that make receipt or retention of such benefit unjust. Defendants have been unjustly enriched in violation of Nevada law by levying and collecting unjustified fines from Plaintiff Thomas and the Nevada Class Members to make up for absences during their scheduled shifts. Even when Class Members absences were due to unavoidable conflict or emergency, Defendants' policy and practice was to fine class members

1 \$12 to make up for absences during their scheduled shifts. As discussed above, this fine is
 2 neither justified nor proportional to the wages to which Plaintiff Thomas and the Nevada Class
 3 Members were and are entitled. Additionally, the fine is unrelated to any educational or other
 4 benefit for Class Members.

5 180. Plaintiff Thomas and the Nevada Class Members are entitled to recover the full
 6 amount of the unjustified fines in restitution and interest thereon, as well as reasonable attorney's
 7 fees, and costs of suit.

8 **FIFTEENTH CAUSE OF ACTION**

9 **DECLARATORY RELIEF**

10 **(28 U.S.C. §§ 2201 and 2202; Brought by Plaintiffs Morales, Palominos, Handcock, and
 11 Thomas on Behalf of Themselves and the Nationwide FLSA Collective Action Members
 12 Against All Defendants)**

13 181. Plaintiffs Morales, Palominos, Handcock, and Thomas, on behalf of themselves
 14 and all Nationwide FLSA Collective Action Members, re-allege and incorporate by reference the
 15 allegations made in all prior paragraphs as if fully alleged herein.

16 182. Plaintiffs and Defendants have a pending dispute under the FLSA, which the
 17 Court has jurisdiction to hear pursuant to 28 U.S.C. § 1331. The Court also has jurisdiction to
 18 hear Plaintiffs' request for declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.

19 183. At all relevant times, Defendants have been, and continue to be, "employers"
 20 engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all
 21 relevant times, Defendants have employed, and continue to employ the Nationwide FLSA
 22 Collective Action Members as "employee[s]" within the meaning of the FLSA.

23 184. Plaintiffs Morales, Palominos, Handcock, and Thomas previously signed and filed
 24 consents to sue in this action pursuant to 16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256.
 25 Additional Nationwide FLSA Collective Action Members will sign consent to sue forms and will
 26 join this action as plaintiffs in the future.

27 185. At all relevant times, Defendants have required and continue to require the

1 members of the Nationwide FLSA Collective Action to work for their personal services business
 2 without compensation at the minimum wage as required by the FLSA, 29 U.S.C. § 206.
 3

4 186. At all relevant times, Plaintiffs and the other FLSA Collective Action Plaintiffs
 5 regularly worked in excess of forty (40) hours per workweek and continue to do so.
 6

7 187. At all relevant times, Defendants operated under and continue to operate under a
 8 decision, policy and plan, and under common policies, programs, practices, procedures,
 9 protocols, routines and rules of willfully failing and refusing to pay the FLSA Collective Action
 10 Plaintiffs minimum wage for all hours worked and at time and a half rates for work in excess of
 11 forty (40) hours per workweek. At all relevant times, Defendants willfully, regularly and
 12 repeatedly failed, and continue to fail to make, keep and preserve accurate records required by the
 13 FLSA with respect to Plaintiffs and the other FLSA Collective Plaintiffs, including records
 14 sufficient to accurately determine the wages and hours of employment pertaining to Plaintiffs and
 15 other FLSA Collective Action Plaintiffs.
 16

17 188. As a result of Defendants' violations of the FLSA, student-employee members of
 18 the Nationwide FLSA Collective Action suffered damages by being denied proper pay and
 19 overtime wages in accordance with Sections 206 and 207 of the FLSA.
 20

21 189. There is a substantive controversy between Plaintiffs and Defendants. Plaintiffs
 22 and Defendants have adverse legal interests that are immediate, current, and significant.
 23

24 190. As a result of Defendants' unlawful acts, Plaintiffs Morales, Palominos,
 25 Handcock, and Thomas and the other Nationwide FLSA Collective Action Members are entitled
 26 to recover all damages for unpaid minimum wages and overtime compensation in amounts to be
 27 determined at trial, liquidated (double) damages, and/or prejudgment interest, attorneys' fees,
 28 costs, and such other legal and equitable relief as this Court deems just and proper.

29 191. It is in the public interest to have these declarations of rights recorded. Plaintiffs'
 30 declaratory judgment action serves the useful purpose of clarifying and settling the legal relations
 31 in issue. The declaratory judgment action affords relief from uncertainty, insecurity, and
 32 controversy giving rise to this action.
 33

PRAAYER FOR RELIEF AND DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiffs, on behalf of themselves, the proposed Collective Action and Classes, and all others similarly situated, pray for judgment and the following specific relief against Defendants as follows:

1. Designating this action as a collective action on behalf of the proposed Nationwide FLSA Collective Action Opt-In Class (asserting FLSA claims) and
 - (i) promptly issuing notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Collective Action Opt-In Class, which (a) apprises them of the pendency of this action, and (b) permits them to assert timely FLSA claims in this action by filing individual Consent to Join forms pursuant to 29 U.S.C. § 216(b);
 - (ii) tolling the statute of limitations on the claims of all members of the FLSA Collective Action Opt-In Class from the date the original Complaint was filed until the Opt-In Class members are provided with reasonable notice of the pendency of this action and a fair opportunity to exercise their right to opt-in as Plaintiffs;
2. Certifying this action as a Class Action on behalf of the California Class;
3. Designating Named Plaintiffs Morales, Palominos, and Handcock as representatives of the California Class;
4. Certifying this action as a Class Action on behalf of the Nevada Class;
5. Designating Named Plaintiff Thomas as representative of the Nevada Class;
6. Certifying this action as a Class Action on behalf of the Nevada Absence Fine Subclass;
7. Designating Named Plaintiff Thomas as representative of the Nevada Absence Fine Subclass;
8. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, California law, and Nevada law;
9. Awarding damages, restitution, and statutory penalties to be paid by Defendants;

1 10. Awarding costs and expenses, including reasonable attorney's fees and expert
2 fees;
3 11. Awarding pre-judgment and post-judgment interest, as provided by law; and
4 12. Ordering such other and further legal and equitable relief as this Court deems,
5 necessary, just and proper.

6
7 DATED: April 29, 2014

Respectfully submitted,

8 By: /s/ Bryan J. Schwartz

9 BRYAN SCHWARTZ (SBN 209903)
10 ADETUNJI OLUDE (SBN 264873)
11 BRYAN SCHWARTZ LAW
12 1330 Broadway, Suite 1630
13 Oakland, California 94612
14 Telephone: (510) 444-9300
15 Facsimile: (510) 444-9301
16 Email: bryan@bryanschwartzlaw.com
17 Email: adetunji@bryanschartzlaw.com
18 *Attorneys for Individual and Representative
19 Plaintiff Jessica Morales, et al., and the Putative
20 Class*

21 LEON GREENBERG(SBN 226253)
22 DANA SNIEGOCKI(SBN 261212)
23 Law Office of Leon Greenberg
24 2965 South Jones Boulevard #E-4
25 Las Vegas, Nevada 89146
26 Telephone: (702) 383-6085
27 Facsimile: (702) 385-1827
28 Email: leongreenberg@overtimelaw.com
29 Email: dana@overtimelaw.com
30 *Attorneys for the Named Plaintiffs and all others
31 similarly situated*

CERTIFICATE OF SERVICE

Morales, et al. v. Von Curtis, Inc., et al
Case No. 13-CV-04996 VGC

I hereby certify that on April 29, 2014, I caused the following document:

FIRST AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT

to be served via ECF email to the following:

Julie A. Vogelzang (SBN 174411)

Edward M. Cramp (SBN 212490)

Courtney L. Baird (SBN 234410)

DUANE MORRIS LLP

DUANE MORRIS LLP
750 B Street, Suite 2900

750 B Street, Suite 2900
San Diego, CA 92101-4681

E-mail: jvogelzang@duanemorris.com

ecramp@duanemorris.com

albaird@duanemorris.com

elballa@dualelliotis.com

Attorneys for Defendants

Dated: April 29, 2014

BRYAN SCHWARTZ LAW

/s/Adetunji Olude

Adetunji Olude

BAILEY STOUT BRYAN SCHWARTZ LAW

1330 Broadway, Suite 1630

1555 Broadway, Suite 103
Oakland, California 94612

Telephone (510) 444-9300

Telephone (510) 444-9303
Facsimile (510) 444-9301

ATTORNEYS FOR PLAINTIFFS